

**Planning Commission Hearing  
April 14, 2008**

***Project Title:*** *Tuluwat Restoration Project – Conditional Use Permit*

***Project Applicant:*** *Table Bluff Reservation – Wiyot Tribe*

***Case No:*** *C-04-011*

***Project Location:*** *Indian Island east of Highway 255, APN 405-011-002, -010*

***Zoning & General Plan Designation:*** *Natural Resources (NR); Coastal Zone within State retained jurisdiction*

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***Recommendation:*** *Approve the Conditional Use Permit and Adopt Resolution 2008-02*

***Recommended Motion:*** *"I move that the Planning Commission approve the conditional use permit and adopt Resolution 2008-02 and read it by title only."*

***Project Description:*** The Tuluwat Restoration Project ("Project") proposes the construction of a ceremonial place where the Wiyot Tribe intends to conduct a variety of cultural activities including the World Renewal Ceremony, as well as cultural and environmental education activities for the tribal and regional community. The project includes implementation of an interim site cleanup plan for contaminated soil (including dioxin contamination), construction of tribal gathering areas such as a dance house and fire ring, as well as a caretaker's residence, restored dock and bulkhead, vault toilet, and camp kitchen, all in the setting of a restored native environment which will include trails and native landscaping.

Use levels at the site will range from just a few people (up to 49) for weekly tours to a peak of 250 people at ceremonial events up to four times a year. All public use of the site will be scheduled and supervised by the Tribe. Access to the Project will be by boat, and will be based at the Woodley Island Marina for weekly tours, with the potential for the use of additional public docks for larger events. No utilities will be extended to the Project site; sewage disposal will be accomplished by onsite wastewater facilities and bottled water will provide potable water. A new well will provide water for irrigation purposes. All required power will be generated onsite by solar and/or diesel or propane systems.

The Project includes the following three phases and associated work tasks:

### Phase 1: Interim Cleanup and Remediation

Because funding as well as identification of in-situ remediation technology have not been identified for full remediation of the project site the Tribe has developed an interim site cleanup plan (ISCP) what has been approved by the NCRWQCB. The interim cleanup and remediation phase of the project is the first step to preparing the site for the development of access and cultural structures and landscaping. Interim cleanup and remediation would mitigate human health and safety risks and allow for visitors to access the site. Phase 1 consists of the following tasks:

- Set-up of construction mobilization and staging areas
- Removal of debris and dilapidated structures
- Cleanup and removal of the majority of contamination
- Installation of vegetated soil and geotextile cover over remaining contamination

### Phase 2: Public Access

During the Public Access phase the Tribe would develop the required infrastructure to facilitate public access. Phase 2 tasks include:

- Installation of protective soil and geotextile cover over remaining uncontaminated portion of the shall mound
- Rebuilding the dock
- Refurbishing the bulkhead
- Installing landscaping and trails

### Phase 3: Cultural Infrastructure

During the Cultural Infrastructure development phase, the Tribe would construct the buildings and infrastructure to support the World Renewal Ceremony on its ancestral location and allow additional cultural, environmental, and educational activities. Project elements to be constructed include:

- Ceremonial dance house
- Camp kitchen
- Refurbished caretaker's residence
- Vault toilet
- Additional landscaping and interpretive signage
- Well

A more detailed project description, as well as a site description and site history are provided in Attachment 3 to this staff report, with a full description provided in the Final Environmental Impact Report for the Tuluwat Restoration Project, SCH# 2004122022, dated August, 2007 which incorporates the Draft EIR dated May 2007 (hereinafter "EIR"). A CD with the entire EIR has been provided as Attachment 15 to this staff report, and is available in hardcopy upon your request.

### **Background:**

The Planning Commission certified the EIR for the Tuluwat Restoration Project on August 13, 2007. The action of certification documents that the Commission found that: 1) the EIR was completed in compliance with CEQA; 2) the EIR was presented to the Planning Commission, and that the Planning Commission reviewed and considered the information contained in the EIR; and 3) the EIR reflects the Planning Commission's independent judgment and analysis. The Project as currently proposed is the same project described as the "Proposed Project" alternative in the EIR.

The Project is associated with a number of potentially significant impacts in the following general areas:

- Cultural Resources
- Transportation
- Biological Resources
- Hydrology and Water Quality
- Air Quality
- Geology and Tsunami
- Aesthetics and Visual Resources
- Noise
- Public Health Hazards and Hazardous Materials
- Recreation and Open Space

As provided in the Statement of Findings for the Project together with the Mitigation Monitoring and Reporting Program, the majority of potentially significant Project impacts are mitigated below a threshold of significance. The EIR contains detailed discussion of these potential impacts and the mitigation proposed. There are some impacts that, even after adoption of all feasible mitigation measures, remain potentially significant. These potentially unmitigated impacts include risks associated with inadequate emergency access, and risks associated with a tsunami event as a result of inadequate access. These unmitigable impacts do not preclude the Commission from approving the CUP for the Project, but do require the Commission to adopt a Statement of Overriding Consideration as discussed later in this staff report.

### **Applicable Regulations:**

The Project is located within the retained jurisdiction of the California Coastal Commission; but the City still retains the land use authority over the Project. This means that the Tribe is required to obtain a conditional use permit from the City, and a coastal development permit from the State.

In order to give the use regulations for a given zoning district the flexibility necessary to achieve the objectives of City's Zoning Regulations, conditional uses are permitted in certain zoning districts subject to the granting of a use permit. Because of their unusual characteristics relative to the zoning district in which they are located, conditional uses require special consideration so that they may be located and designed properly with respect to the objectives of the zoning regulations and with respect to their effects on surrounding properties.

The NR zoning district's only principally permitted use is management for fish and wildlife habitat. There are several conditionally permitted uses allowed in the NR zone that are

applicable to this project - educational or scientific study, restoration and enhancement for fish and wildlife habitat values, and pedestrian access.

**Findings Required for CUP Approval:** Title 15, Chapter 155 of the Eureka Municipal Code, Section 155.285, specifies the findings that the Planning Commission must make prior to approving a conditional use permit. (Note - All references to Eureka Municipal Code Title 15, Chapter 156 as contained in this staff report and in any attachments hereto are hereby cross-referenced as Eureka Municipal Code Title 10, Chapter 5, Article 29 per the Parallel References found in Attachment 14) The Commission must find:

- (1) *That the proposed location of the conditional use is in accord with the objectives of Chapter 155 and the purposes of the district in which it is located; and*
- (2) *That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity; and,*
- (3) *That the proposed conditional use will comply with each of the applicable provisions of Chapter 155; and*
- (4) *That the proposed conditional use, if located in the coastal zone, is consistent with the certified Local Coastal Program and is consistent with the intent of the zoning district.*

### **Analysis:**

Following is the rationale the Commission can rely on in order to make the required findings for approval of the conditional use permit. Much of the information provided under one section of these findings may also be germane for others. Thus, all information in these following sections can and should be considered together to make the required findings.

### **Finding (1) - The proposed location of the conditional use is in accord with the objectives of Chapter 155 and the purposes of the district in which it is located**

**Objectives of Chapter 155 and Purposes of District:** As set forth by Eureka Municipal Code (EMC) Section 155.002, the zoning regulations are adopted pursuant to the City Charter to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare. More specifically, the objectives of Chapter 155 are listed below, followed by a discussion of how or why the Project can be found to be in accord with these objectives.

- (a) *To provide a precise guide for the physical development of the city in such a manner as to achieve progressively the arrangement of land uses depicted in the general plan adopted by the Council.*

The purpose of the Natural Resources zoning district and general plan land use designation is to protect, enhance, and restore environmentally sensitive habitat areas, and to allow resource dependent uses consistent with the continuance of such habitat areas. Conditionally permitted uses in the NR zone include educational or scientific

study, restoration and enhancement for fish and wildlife habitat values, and pedestrian access.

The Project's objectives include the protection, restoration and enhancement of habitat on the island. The Project supports these objectives in a number of ways, including the clean-up of on-site debris and contamination, removal of invasive plant species, and restoration of native species. These combined activities would help improve and sustain habitat values on Indian Island. Project objectives also include education, and to this end the Tribe proposes to conduct natural resource dependent educational and scientific study/environmental monitoring of Indian Island, as well as improve pedestrian access within the project site in a manner that is sensitive to and promotes the restoration and protection of the island's natural resources and ecology. These uses are all clearly consistent with the NR District's purpose and allowed uses.

Cultural and natural resource uses are inextricably related for the Wiyot. The proposed cultural use of the site is thus considered to be resource dependent, and a consistent and compatible use within the NR district. Further, the proposed cultural activities such as the World Renewal Ceremony are site specific and dependent as they relate to Tuluwat. This is why the Wiyot do not hold the World Renewal Ceremony anywhere else; if it cannot take place at Tuluwat, it does not take place at all. The inseparable connection between a cultural resource and a natural resource is a fundamental tenet of Wiyot culture. A detailed analysis supporting the NR consistency finding is contained in discussion for Impact 3.8.1 on pages 3.8-12 through 3.8-14 of the EIR.

In addition to the requirements of the NR district, there is a general plan policy that specifies allowed uses of Indian Island in particular. Policy # 6.A.22 states that *"The City shall maintain Indian Island as a site for habitat, scientific research, and education. Existing uses may be maintained but shall not be expanded, except for the reburial of Native American remains shall be permitted as part of the mitigation for coastal-dependent industrial development elsewhere in the Planning Area."* The Proposed Project constitutes a change in use from its most recent use as an industrial ship repair facility to one of its original uses as a cultural, educational and ceremonial site. The development footprint associated with the existing use is being reduced by removing several of the existing buildings. As discussed above, the new use is one that is compatible with the NR district.

*(b) To foster a harmonious, convenient, workable relationship among land uses.*

The land use and zoning designation for all of Indian Island is NR. Land uses on the island consist of mostly open space. A large multi-species rookery and some residences are located on the southwest portion of the island, separated from the Project site by Highway 255. The bay immediately surrounding Indian Island is zoned Water-Conservation (WC), which conditionally allows boat ramps, passive recreation and boat ramp facilities among other uses.

Woodley and Daby Islands are located between the Project site and the Eureka waterfront; the waterfront in this area is zoned Commercial Waterfront (CW). Daby Island is zoned NR, as is most of Woodley Island except for the area of the marina

which is zoned Public Facilities – Marina (PF-M). The marina is developed with commercial/recreational uses, and the rest of the island is open space.

As discussed in the preceding section, the Project is determined to be consistent with the purpose of the NR zoning district and as such, can be found generally compatible with properties zoned NR in the vicinity. Proposed Project design and operation, together with proposed mitigation measures, should minimize incompatibility issues related to surrounding land uses. The relative isolation of the project site also serves to reduce incompatibility impacts. The Project's proposed development and intensity of use would create a use level that is lower than that which occurs on surrounding developed areas, such as Woodley Island, the Samoa Peninsula, and the Eureka Waterfront. The proposed use would also be on average less intense than the previous use of the site, which included industrial and agricultural use and a family homestead.

- (c) *To promote the stability of existing land uses that conform with the general plan and to protect them from inharmonious influences and harmful intrusions.*

The Project proposes to reestablish a land use that is consistent with the NR zoning and land use designation of the Project site. The Project with incorporated mitigation includes a number of elements that will insure that construction and operation of the Project does not negatively impact existing land uses.

- (d) *To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the city as a whole.*

The Project proposes to remove highly contaminated soil and midden from the project site, together with debris and deteriorating structures, all benefiting the Humboldt Bay environment and the City as a whole. The Project will also create a cultural, educational, and scientific venue for the Wiyot Tribe and the public, will provide controlled public access to Indian Island, and will allow for the reinstatement of an historical use to its native location by providing the opportunity for the Tribe to once again hold the World Renewal Ceremony at Tuluwat.

- (e) *To prevent excessive population densities and overcrowding of the land with structures.*

The number and area of buildings on the property will be less with the Project as compared to pre-project conditions. Those structures that will be built as part of the Project will be placed within the footprint of existing structures, as will the dock to be reconstructed. No residences will be added, and there is no element of the project that can reasonably be construed to increase population densities within the City or County.

- (f) *To promote a safe, effective traffic circulation system.*

The Project will not generate a significant amount of traffic during normal operations, that is, during weekly tours. Larger events which can occur up to four times per year and which includes the World Renewal Ceremony will generate more traffic than

during weekly tours. The requirement for a Special Event Permit to address parking and traffic (among many other things) during larger events, as well as an Emergency Access Plan will promote safe and effective traffic circulation. The required Traffic Management Plan will insure construction traffic does not significantly impact traffic circulation.

- (g) *To foster the provision of adequate off-street parking and off-street truck loading facilities.*

The Transportation chapter of the Project EIR thoroughly addresses the parking requirements for this project. The Tribe proposes to provide parking at the Woodley Island Marina, from where weekly tours will be based using the Madaket. The number of required parking spaces was based on the Project's normal operation, determined to be the weekly tours. Parking requirements for a place of public assembly with fixed seating (due to the "fixed" seating on the Madaket) were applied, together with residential requirements for the caretaker's residence, which results in the need for twelve parking spaces (ten spaces associated with the tours and two spaces for the residence). Slip rentals at the Woodley Island Marina for the Madaket, the Tribe's boat, and the caretaker's boat would provide three parking spaces, leaving a deficit of 9 spaces.

The Tribe intends to meet the normal operation parking needs by executing a Memorandum of Agreement with the Harbor District to allow the Tribe to utilize the District's parking area for tours, as required by Mitigation Measure 3.2.1b. Since the required agreement is with a governmental agency, staff is not recommending that a parking indenture be required. The MOA is required to contain a provision that the City be notified of any changes to the MOA to insure continued compliance with the Project's parking requirements.

Parking for the larger "special events", which include the yearly World Renewal Ceremony and up to three mid-size events per year, is not considered in the onsite parking requirements, but instead would be provided through a Special Event Permit from the City and/or the Harbor District. The Special Event Permit would allow the Tribe to use public parking areas in the same manner that other local festivals or special events are allowed to do. Mitigation Measure 3.2.1c addresses the requirement for a Special Event permit to insure that parking conflicts with other events do not occur to the extent that parking would be negatively impacted.

- (h) *To facilitate the appropriate location of community facilities and institutions.*

The Project implements the Tribe's and City's vision of what should occur on this portion of Indian Island. This vision is expressed in the gift grant deed (2004-22905-5, Humboldt County Official Records, Attachment 13 to this staff report) for the majority of the Project site from the City to the Tribe. The deed notes the intent of the property conveyance and includes restrictions that lend support to the finding that Tuluwat is the appropriate location for the Project, and further supports other objectives of Chapter 155 including objectives (c) and (d) above. These expressions of intent and restrictions are as follows:

- The property was gifted to the Tribe on the express condition that it be used solely and perpetually for the purpose of developing and maintaining, to the greatest possible extent, a place and facilities that support the Wiyot World Renewal Ceremony at the Tuluwat Village site, the protection of the shell mound, its contents and all other Wiyot artifacts, the repatriation of human, funerary and cultural remains, cultural educational and creational activities, natural resource management and gathering activities, and native plant and wildlife habitat protection enhancement.
- The conveyance was made upon the express condition that the ownership of the subject property shall not be transferred to any third party, nor shall the property in any other manner be placed into trust status pursuant to federal law unless mutually agreed by the City and the Tribe.
- The purpose of the transfer of title to the Tribe was for the above noted activities, and the Tribe will conform to, and be governed by the City's rules and regulations pertaining to the zoning and land use of the site, as applicable.
- If the property is not used in a substantially similar manner as described above, the City has the power to revert all right, title and interest in the property.

This deed does not include the 1.5 acre parcel that is the location of the developed portion of the Project (i.e., the location of the structures), which the Tribe purchased from Kay and which is therefore not encumbered with similar restrictions. A condition of approval has been included that requires the Tribe to record a deed restriction in favor of the City over the 1.5 acre parcel that includes some of the restrictions contained in the City's grant deed, specifically the second and third bulleted items.

- (i) *To promote commercial and industrial activities in order to strengthen the city's tax base.*

The commercial/industrial use that previously occurred on the site has long been abandoned, and cannot be reestablished in the NR zone. The education and cultural tours may provide an additional venue that could attract visitors to Eureka who wish to participate in these tours; these visitors could contribute positively to the City's tax base.

- (j) *To protect and enhance real property values.*

The Project proposes to clean up the Project site, currently an abandoned commercial/industrial site that cannot be reestablished as such, and implement a project that will benefit the Tribe as well as the community. The debris cleanup, interim soil remediation project, and removal of dilapidated structures will improve onsite and offsite property values. The project is designed and mitigated such that no negative impacts to property values are anticipated.

- (k) *To safeguard and enhance the appearance of the city.*



The removal of the abandoned and deteriorating structures on the site, and construction of the Project under the constraints prescribed by the Project and mitigation measures, will safeguard and enhance the appearance of the City. The required approval by the Design Review Committee will further facilitate this outcome.

***Finding (2) - The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.***

A Project referral was included with the EIR transmittal that was sent to numerous agencies for review and comment. All comments received by the City pertained to the EIR, and were included and addressed in the Final EIR, with the exception of the Fire Department which submitted comments on the CUP. Their CUP comments reaffirmed their major concerns regarding access, evacuation, and lack of water supply and the need to comply with mitigation measures included in the EIR that address public safety issues.

Staff worked very closely with the EFD to develop appropriate mitigation to the extent feasible for their concerns. The MMRP contains all mitigation measures that were included in the EIR to address these concerns; however, inadequate emergency access remains an unmitigated significant impact of the Project. EFD further commented that that the dance house must have fire resistive construction, an automatic fire alarm and sprinkler system installed and engineered by licensed contractors and/or design personnel, and proper exiting; these requirements are included in the MMRP (Mitigation Measures 3.2.3e and 3.2.3f), the requirement for proper exiting is a standard issue to be addressed as part of the building permit, and EFD will have the opportunity to review the building plans for compliance.

As discussed in this staff report and extensively in the EIR, and as set forth in the Statement of Overriding Considerations, potentially significant impacts relative to inadequate emergency access for the Project cannot be fully mitigated due to the unique Project circumstances. Despite the incorporation of all feasible mitigation, the Project may still result in inadequate emergency access for the project. The issue of inadequate emergency access, the primary concern of the EFD, can only be resolved by constructing an emergency access road from Highway 255 to the project site. Without such a road, emergency responders along with their appurtenant equipment such as fire trucks, ambulances, and police cars could not reach the site, which makes emergency access to and from this site more difficult than normal, less efficient, and increases response time.

The construction of an emergency access road would involve a significant increase in wetland and other ESHA impacts, including a significant increase in permanent wetland fill. A road would increase the chances of trespassing and the chances that cultural resources would be looted. A road would be inconsistent with the overall scale of the proposed project, and with the project's intent of reestablishing an historic and culturally appropriate setting where access was historically only by boat. Traffic circulation conflicts that could result from placing a road intersection on Highway 255 could prove complex, and there could be issues due to the "no access" strip the City owns between Highway 255

and the project site although gating road and reserving road for emergency use only would likely lessen such effects.

By adopting the Statement of Overriding Considerations as part of the project approval, the Planning Commission acknowledges these remaining potentially significant impacts and determines that the benefits of the project outweigh these significant effects on the environment which, together with the analysis herein, enables the Planning Commission to find that the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity in regard to emergency access.

The Project site has areas of contamination within the midden material and limited groundwater contamination which pose a threat to the public health, safety and welfare. The constituents of concern in the midden include metals, arsenic, PCP, dioxin, and hydrocarbons.

The Project proposes an interim cleanup of the worst of the contamination, with additional cleanup to follow as funding allows. An interim cleanup plan has been approved by the NCRWQCB for the site. Because of the cultural sensitivity of the site and the need to limit disturbance and removal of the midden, only the most highly contaminated midden will be excavated and removed, with provisions to allow the safe re-interment of contaminated cultural resources. The NCRWQCB is requiring the Tribe to pursue final remediation of the site. Mitigation Measure 3.11.3d requires the Tribe to record an Environmental Covenant against the Project site with includes this requirement and others, for the purpose of enabling the NCRWQCB to maintain a level of control for the monitoring of future actions concerning the property. The Tribe has determined in-situ treatment of remaining contaminated midden is feasible, once funding is secured.

The Project as mitigated will result in interim remediation of the majority of onsite contamination in a manner that protects humans and the environment; will insure final cleanup is pursued and that the Project does not preclude final cleanup; includes environmental protections from contaminated sediment transport during construction; and protects visitors from contamination impacts. An additional mitigation measure not included in the EIR and which clarifies how cultural resources may be safely re-interred, has been included in the MMRP. The health, safety and welfare of the community will be protected and enhanced as a result of the Project.

The project would not be materially injurious to properties or improvements in the vicinity. No significant potential for incompatibility with surrounding land uses was identified in the EIR. The location of the Project within an ESHA has the potential to cause significant biological impacts, but adequate mitigation has been included to reduce these impacts to an acceptable level. Numerous mitigation measures govern the operation of the project to insure detrimental effects from such operation are minimized. The adoption of the MMRP insures the mitigation measures will be implemented for the Project, thus insuring potential environmental impacts remain insignificant.

It can therefore be reasonably concluded that the project location and thee conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

***Finding (3) - The proposed conditional use will comply with each of the applicable provisions of Chapter 155.***

The applicable provisions of Chapter 155 include the development regulations of the Municipal Code for such things as land use; building height, size, and location; off-street parking, etc. As discussed above, Staff considers the project to be a conditionally permitted use in the NR zoning district, and no variances from the Chapter 155 provisions have been identified for this project. However, there are some elements of the project that warrant mention here.

Parking: Parking for the Project is being provided in a manner that although unique, has been determined by staff to meet the intent of the Chapter 155 parking regulations, as described previously in this staff report and in the EIR. The Project proposes access only by boat, which preserves the traditional mode of access to the site, preserves the natural and isolated ambience of the traditional setting, and avoids a number of potentially significant impacts that would result from constructing a road and parking lot, if even feasible, as discussed in the EIR and Statement of Overriding Considerations.

Residential Use in NR Zone: The existing residential structure proposed to be a caretaker's residence, and the residential use of that structure, were established prior to October 16, 1966 and are therefore considered both a nonconforming structure and a nonconforming use within the NR District. The Project proposes to renovate the nonconforming structure for residential use by an on-site caretaker. The EMC allows alterations of and additions to a non-conforming residential structure in the NR zone, provided that the number of units is not increased. The proposed caretaker's residence is renovation does not include any increase in the number of units.

The EMC also allows the reestablishment of a nonconforming residential use. In most cases, when a nonconforming use has been abandoned for more than 90 days (the residential use in this case has been abandoned for several years), it cannot be reestablished. However, the EMC makes an exception to this time constraint for non-conforming dwelling units, which would allow the reestablishment of the residential use of the existing residence, proposed for use by a caretaker.

The proposed project also includes construction of a "camp kitchen" to be used solely for cultural and educational activities associated with the proposed project, and not as a part of caretaker's residential use. Therefore, the kitchen would not be considered an expansion of the residential nonconforming use or structure.

***Finding (4) - The proposed conditional use is consistent with the certified Local Coastal Program and is consistent with the intent of the zoning district.***

**Objectives of Chapter 156 of the EMC, Coastal Zoning Regulations:** In addition to the objectives provided in §155.002, the objectives and purposes of the coastal zoning regulations are prescribed in §156.002, and are as follows:

- (a) *Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and human-created resources.*

The Project together with all mitigation measures incorporates numerous elements that support this objective, including but not limited to remediation of contaminated soil/midden, removal of non-native species and planting of natives, construction techniques that minimize impacts to coastal resources, and enhanced protection of cultural resources.

- (b) *Assure orderly, balanced utilization and conservation of coastal zone resources, taking into account the social and economic needs of the people of this city, the region, state, and nation.*

The Project is an appropriate use in the NR zoning district, and is specifically tied to the project location (Indian Island and Tuluwat) in a historical context. The Project will provide for the social and cultural needs of the Wiyot people, will provide an educational and coastal access venue for the public, and as proposed and mitigated insures proper utilization, conservation and enhancement of valuable coastal resources.

- (c) *Maximize public access to and along the Humboldt Bay shoreline, and maximize public recreational opportunities in the coastal zone, consistent with sound resource conservation principles and constitutionally protected rights of private property owners.*

The Project provides public access to Indian Island where none existed previously. The project also provides recreational opportunities through cultural and educational tours of the Project site. The Project incorporates, as proposed and mitigated, elements that will protect coastal resources from public access impacts including a vegetated and fenced buffer, signage, and controlled supervised public access.

- (d) *Assure priority for coastal-dependent and coastal-related development over other developments on the shoreline.*

The Project has been demonstrated to be site-dependent, that is, it cannot be located anywhere other than Tuluwat in order to meet the identified Project goals and objectives. The project constitutes a return of an appropriate historical use to historic Wiyot lands, and as such, is the most appropriate type of development for this site.

- (e) *Provide a definite plan for development so as to guide the future growth of the city within the coastal zone.*

This objective is discussed in Finding (1) above.

- (f) *Protect the social and economic character and stability of residential, commercial, agricultural and industrial areas within the city.*

The Project site is not considered a residential, commercial, agricultural or industrial area of the City. The Project cannot be reasonably seen to have any detrimental impacts on such areas except perhaps due to traffic or parking congestion during large events. This potential impact is adequately addressed by the requirement for a Special Event Permit.

**Required Conditions of the NR Zone District:** As prescribed by §156.067(B) of the EMC, all principally and conditionally permitted uses within the NR zoning district must meet the requirements of the resource protection standards in EMC §§156.050 through 156.056 of the Coastal Zoning Regulations, which are the City's Coastal Zone Development Standards. These standards are listed below, along with a brief discussion regarding Project compliance with relevant portions of these standards. As with other issues addressed in this staff report, more in-depth discussion and analysis can be found in pertinent sections of the EIR.

- **EMC §156.051 - Public Access Standards**

Pursuant to this section of the EMC, new development between the first public road and the coast is required to provide dedicated vertical public access to the mean high tide and lateral access along the shoreline. There are some exceptions to this requirement, such as where there is a need for the protection of fragile coastal resources.

The project area is not currently available for access by the public, nor has it ever been. The project site's previous use was for commercial/industrial purposes, and was in private ownership with no provisions for public access. The Project provides controlled public access to the project site and the Indian Island shoreline by providing weekly tours for groups such as schools, as well as tours for the public. Access will be provided by boat, using the dock to be reconstructed as part of the project. Limiting access points to only the water, and not allowing unsupervised public access to the island either by land or by water, will allow the Tribe to more easily control such access in order to protect the natural and cultural resources of the site.

The project does include another element of public access, and that is the floating dock. The floating dock would be available to the public during daylight hours and when the Tribe is not using it, allowing the fishermen who may tie up to the current dock to continue to use the area. A gate at the end of the fixed dock would keep people from accessing Indian Island unsupervised. In addition, there is public access to and along the shoreline provided in close proximity to the project site at the Woodley Island Marina.

Staff has determined that the Project would enhance the public's ability to access the shoreline on Indian Island, would not eliminate or impede any existing public access, would not require dedication of vertical or lateral public access easements, and would allow the public to experience this unique asset of the Humboldt Bay region.

- **EMC §156.052 - Environmental Resources Standards**

*Permitted shoreline construction. Revetments . . . and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

The proposed revetment is required to protect the further erosion of the culturally sensitive midden. A permit for the first section of this revetment was previously issued by the Coastal Commission, thus finding it to be acceptable shoreline construction. Reconstruction of the bulkhead, which also acts as a revetment and which because of its deteriorating condition has become a collection point for debris, would also qualify as permitted shoreline construction.

*Protection of environmentally sensitive habitat areas. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources, including restoration and enhancement projects, shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

Indian Island is identified in the EMC and general plan as an environmentally sensitive habitat area (ESHA). This staff report and the EIR contain discussions as to why the Project is appropriate for the NR zoning district which requires that uses located in the NR zone be resource dependent uses consistent with the continuance of sensitive habitat areas. These discussions also address why the Project cannot be located anywhere except Tuluwat on Indian Island. The Project as proposed and mitigated includes a number of elements and mitigation measures to ensure protection of ESHAs. Following is a brief summary of some of these measures. A full description of these and other relevant measures is contained in the EIR and MMRP.

- The design, construction and maintenance of landscaping, trails, low wooden fencing, and signage to direct all visitors away from all environmentally sensitive habitat areas.
- A Site Use Management Plan that includes measures to protect sensitive habitat areas from direct or indirect disturbance from visitation and associated activities to the satisfaction of the Department of Fish and Game.
- Shielded lighting to restrict light to only the developed area of the site.
- No amplification systems.
- Construction buffers around eelgrass beds offshore of the project site and transplanting of eel grass from a direct impact area.
- The preparation and implementation of a City-approved Non Point Source Pollution Plan/Stormwater Pollution Prevention Plan for all construction activities.

- The selection of revetment materials to minimize the area of wetland fill, replanting of the revetment with salt grass and pickleweed in the mudflat area, and the onsite mitigation for any wetland loss at a minimum of a 1:1 replacement ratio.
- Noise, vegetation removal, or other construction activities that may impact special-status species shall be limited to non-breeding periods.
- Limitation of pile-driving activities and other in-water construction activities to the time period of September 1 through November 30 to avoid direct impacts to juvenile salmon and steelhead, and during low tide during this period to minimize impacts to adult salmon and steelhead.
- Management of construction materials and debris to avoid entry into the bay, and should the material inadvertently enter the bay, it shall be removed immediately.
- Best management practices to limit sediment in stormwater, as well as during construction in the bay waters or mudflats.
- Revetment materials and dock pilings shall only be installed during lower stages of the tide.

*Diking, filling, or dredging. The diking, filling or dredging of open coastal waters, wetlands, or estuaries shall be permitted only where all of the following exist:*

- (1) The diking, filling or dredging is for a permitted use in that resource area as provided in Land Use Plan Policies;*
- (2) There is no feasible, less environmentally damaging alternative;*
- (3) Feasible mitigation measures have been provided to minimize adverse environmental effects, consistent with Land Use Plan Policies; and,*
- (4) The functional capacity of the resources area is maintained or enhanced, consistent with the Land Use Plan Policies.*

*Wetland or estuary development.*

*(1) Diking, filling or dredging of a wetland or estuary shall maintain or enhance its functional capacity.*

*(2) Functional capacity, the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, all of the following must be demonstrated:*

- (a) That presently occurring plant and animal populations in the ecosystem will not be altered in a manner that would impair the long-term stability of the ecosystem, such as, natural species diversity, abundance and composition are essentially unchanged as a result of the project;*
- (b) That a species that is rare or endangered will not be significantly adversely affected;*
- (c) That a species or habitat essential to the natural biological functioning of the wetland or estuary will not be significantly adversely affected;*
- (d) That consumptive (such as, fishing, aquaculture and hunting) or nonconsumptive (such as, water quality and research opportunity) values of the wetland or estuaries ecosystem will not be significantly reduced.*

Chapter 3.4 of the DEIR, as well as the response to the Coastal Commission DEIR comments as contained in the FEIR, provide a thorough discussion of the issue of wetland fill. The Project proposes the construction, reconstruction, or repair of several project elements within wetlands, including the pier and floating dock, the bulkhead, and the protective soil and geotextile cover/revetment. These uses are considered to be allowable wetland fill pursuant to the City's LCP, which allows filling of wetlands for revetments and piers.

The removal of structures from wetlands as part of the demolition process, and the reduced cross-sectional area of the pier and dock pilings relative to the present pier and dock, will result in approximately 749 square feet of regained wetland for the project overall. The proposed protective cover/revetment will be placed within 1,276 square feet of intertidal wetlands. The revetment area (1-ft. sheet pile and permeable concrete pavers, is anticipated to support wetland species that will be planted within a network of openings between pavers which constitute the "fill" portion of the revetment. The openings or "unfilled area" will constitute 40% (resulting in 766 sq. ft. of the area being filled) to 70% (resulting in 382 sq. ft. of the area being filled) of the 1,276 sq. ft. area depending on the type of pavers or similar material selected. Thus, even at the high end of the potential paver fill of 766 sq.ft., the amount of fill would be roughly equal to the amount of wetland regained by the removal of structures and replacement of pilings.

In addition, the area that will be impacted by the cover/revetment is highly disturbed as a result of past industrial use. The area currently has little habitat value due to its mobile soil material and minimal vegetation (less than 5% coverage) as described in the EIR. After installation of the revetment, there will be a net gain in basal area for wetland vegetation as a result of the proposed planting of wetland vegetation between the pavers, and thus a net gain in wetland function and value. Because the area to be filled would be equal to or less than the area of wetland regained by removal of structures and replacement of piles, together with the proposed increase in wetland vegetation basal area by planting the revetment, no further mitigation would be required.

Mitigation Measure 3.4.2c requires that any net loss of wetland as a result of the revetment be mitigated at a ratio of at least 1:1. A mitigation site is located at the road "stub out" located on the northwestern portion of the site adjacent to Highway 255. This "stub out" was constructed by filling an approximately 7,000 square foot area of marsh with approximately 4 feet of rock fill. The implementation of this mitigation measure requires the Tribe to submit to the Community Development Department documentation of the wetland loss and gain based on the final design of the project, and a plan for mitigating the loss of wetland onsite if a net loss of wetland would occur.

Temporary impacts to wetlands may occur as a result of construction of a temporary causeway. The Project proposes to remove this temporary facility after it is no longer needed, and the mudflat would be returned to pre-construction conditions. Indirect construction impacts to wetland from sediment mobilization are thoroughly addressed in the water quality mitigation measures, and generally include standard best management practices.



***Buffers.** A buffer shall be established for permitted development adjacent to all environmentally sensitive areas. The width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of information, the type and size of the proposed development, and/or proposed mitigation (such as planting of vegetation) that will achieve the purposes of the buffer, that a smaller buffer will protect the resources of the habitat area.*

The Project includes the removal of a number of structures within inter-tidal wetland/ ESHA. New structures will be located further from inter-tidal wetlands, with the average distance between the new buildings and inter-tidal wetlands increasing from 19 to 35 feet as compared to the existing buildings. This is the largest buffer feasible while still providing for the needed facilities and Project operation. Locating the structures around the perimeter of the upland area, thereby concentrating outdoor activities more toward the center of the developed upland area will facilitate the structures themselves to act as part of the buffer, thus providing a more effective buffer than locating the structures further from the ESHA and thereby locating open-air human activity closer to the ESHA. Because the buffer from structures is less than 100 feet, further measures are proposed to insure the buffer's effectiveness.

In addition to a spatial buffer (i.e. the setback of the structures from the ESHA), a dense vegetative landscape is proposed around the perimeter of the shell mound, which will act as a physical barrier to help reduce disturbances to surrounding inter-tidal wetland areas from human activities, as well as serve to enhance adjacent wetland values. This landscaped buffer would be planted with native species such as California wax myrtle (*Myrica californica*), sitka spruce (*Picea sitchensis*), Shore pine (*Pinus contorta var. contorta*) and Hookers Willow (*Salix hookeriana*). The dense foliage in the buffer would screen the ESHA from the structures and their associated activities and would also serve to enhance wildlife habitat values.

Proposed low wooden fencing around the edge of the midden would help discourage visitors from leaving the upland areas, as will proposed signage directing visitors not to enter sensitive habitat areas. Lighting is required to be shielded such that it would not shine beyond the developed area of the project site, and no sound amplification would be allowed. Programmatic measures to reduce potential impacts to adjacent ESHAs from site use include limits on the hours of operation, numbers of visitors, and frequency of visitation; supervision of all visitation of the site by qualified and trained Tribal staff; the exclusion of livestock and pets from the Project site; and the existence of an on-site caretaker to monitor the site on an ongoing basis, which will minimize trespassing including trespassing within inter-tidal wetlands.

Staff has determined that the buffer as proposed, and with all applicable mitigation measures incorporated, is sufficient to protect the ESHA considering the site limitations and the potential project impacts to adjacent ESHA.

- EMC §156.052 - Natural Hazards

***Development.** Development in the city's coastal zone shall:*

- (1) *Minimize risks to life and property in areas of high geologic and flood hazard;*
- (2) *Assure stability and structural integrity;*
- (3) *Neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.*

The Project site is susceptible to impacts associated with a seismic event, a tsunami event, and erosion as discussed in the EIR. As proposed and mitigated, together with Uniform Building Code requirements, the structural integrity of new or reconstructed structures will be seismically appropriate in regard to ground shaking. The protective soil and geotextile cover over most the shell mound and along the shoreline would be designed to protect the midden and shoreline from erosion. Mitigation measures and best management practices described in the Hydrology and Water Quality section of the EIR will minimize erosion during construction.

Risks to life and property during a tsunami event have been minimized to the extent feasible, but because of inadequate emergency access to and from the Project site, some risks still exist. As discussed earlier in this staff report, a Statement of Overriding Consideration to comply with CEQA is required, which documents the determination that the project benefits outweigh the risks. Because the risks have been minimized to the extent feasible, and considering the unique circumstances of the Project, and considering the analysis in the Statement of Overriding Considerations, staff believes the Project complies with Natural Hazards requirements.

- EMC §156.052 Visual Resources Standards

*Conditions of development near scenic areas. Permitted development within scenic coastal areas, where otherwise consistent with the policies of this Local Coastal Program, or except where designated within a MG District, shall:*

- (1) *Minimize the alteration of natural landforms;*
- (2) *Be visually compatible with the character of the surrounding area;*
- (3) *Be sited and designed to protect views to and along the ocean and scenic coastal areas;*
- (4) *Wherever feasible, restore and enhance visual quality in visually degraded areas.*

The City's LCP identifies Indian Island as a scenic coastal area. The need to minimize the disturbance of the culturally significant midden is a limiting factor in regard to grading, and minimal grading is proposed for the Project. Dilapidated structures and debris will be removed from the island. As described in Section 3.9 of the DEIR, new structures will utilize an architectural style and construction materials that visually emulate traditional wood plank style construction. Exteriors would have colors and textures compatible with their surroundings. The new dock would utilize wood trim to the extent feasible, and apply brown concrete stain to the piers to look more like wood. Lighting would be shielded to minimize impacts to nighttime vistas. Finally, the project is subject to the Design Review process, during which these requirements will be considered and implemented. The Project as proposed and mitigated meets the above conditions.

- EMC §156.052 - Public Works Standards

***New or expanded facilities.** New or expanded public works facilities shall be designed and limited to accommodate needs generated by permitted uses and development consistent with the provisions of the Local Coastal Program.*

No utility extensions are proposed for this Project. General Plan Policy 4.A.7 states that within the Coastal Zone, the City shall prohibit the extension of sewer and water in the NR zone. Although it is the City's policy to require development to connect to public utilities (sewer and water) within the City, the Project is well beyond the distance for which the requirement is codified. The former drydock/ship repair operation was not required to connect to public sewer and water. Because of the unique location of the project, the intensity of the proposed use, the high potential for significant environment impacts to result from extending utilities and the extraordinary cost of doing so, the Project does not warrant utility extensions, which staff believes is consistent with the LCP.

- EMC §156.052 - Development Standards

***Precedence of natural resources.** Development type and density shall be that specified by the land use categories and designations in the land use plan map. However, natural resource designations and policies shall take precedence in all cases, except as otherwise provided in this Local Coastal Program, consistent with applicable policies of the Coastal Act. Where a parcel is located partly within and partly without an environmentally sensitive habitat area, development shall be located and designed to avoid significant adverse effects on the environmental resources.*

As discussed throughout this staff report, with more in-depth discussion in the EIR, the Project is an appropriate use in the NR zoning district, and is consistent with natural resource policies of the LCP.

***General Plan Conformance:*** The subject property has a general plan designation of Natural Resources (NR). Compliance with the purpose of the NR land use designation is discussed previously in this staff report, as is Policy 6.A.22 which is specifically germane to the Project location. The discussion and findings under CUP Finding (4) regarding compliance with the LCP can be relied upon when determining conformance with general plan policies related to resource protection, as many of the Natural Resource general plan policies have been codified and are therefore addressed under that finding. Specific to this issue, General Plan Policy 6.A.8 states:

**Policy 6.A.8** Within the Coastal Zone, prior to approval of a development, the City shall require that all development on lots or parcels designated NR (Natural Resources) on the *Land Use Diagram* or within 250 feet of such designation, or development potentially affecting an environmentally sensitive habitat area, shall be found to be in conformity with the applicable habitat protection policies of the General Plan. All development plans, drainage plans, and grading plans submitted as part of an application shall show the precise location of the habitat(s) potentially

affected by the proposed project and the manner in which they will be protected, enhanced or restored.

In addition, the adopted General Plan contains a number of goals and policies that support the proposed project, some of which are as follows:

- Policy 4.A.7      Within the coastal Zone, the City shall prohibit the extension of urban services (sewer and water) into areas with Open Space designations (i.e., Agricultural, Timberland, Natural Resources, Water—Development, and Water—Conservation) . . .
  
- Policy 4.H.2      The City shall encourage the provision of social, recreational, and educational services that complement and enrich those provided by public and private educational facilities.
  
- Goal 5.B          To provide public open space and shoreline accessways throughout the Coastal Zone, consistent with protecting environmentally sensitive habitats and other coastal priority land uses.
  
- Policy 5.B.3      The City shall promote the maintenance of and, where feasible, shall provide, restore, or enhance facilities serving commercial and recreational boating, including party or charter fishing boats.
  
- Goal 6.A          To protect and enhance the natural qualities of the Eureka area’s aquatic resources and to preserve the area’s valuable marine, wetland, and riparian habitat.
  
- Policy 6.A.1      The City shall maintain, enhance, and, where feasible, restore valuable aquatic resources, with special protection given to areas and species of special biological or economic significance. The City shall require that uses of the marine environment are carried out in the manner that will sustain the biological productivity of coastal waters and that will maintain health populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.
  
- Policy 6.A.5      The City shall permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes only when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion.
  
- Policy 6.A.22     The City shall maintain Indian Island as a site for habitat, scientific research and education. Existing uses may be maintained but shall not be expanded, except that reburial of Native American remains shall be permitted as part of the mitigation for coastal-dependent industrial development elsewhere in the Planning area.

Policy 6.C.2      The City shall protect critical habitat areas and preserve the ecosystem of existing natural areas within the city.

Policy 7.E.11      The City shall work with owners of property affected by toxic contamination to identify cost-effective approaches to remediation of contaminated soils. In particular, the City shall focus its efforts on developing unified strategies to addressing cleanup of large areas (e.g., the Westside Industrial Area, the waterfront area) so as to reduce the unit cost of remediation.

Based on the discussion herein and the information in the attachments, particularly the EIR, Staff has determined that the project is consistent with the adopted General Plan.

***California Environmental Quality Act Compliance:*** Approval of a conditional use permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA). The EIR for the project was certified by the Planning Commission on August 13, 2007. The Planning Commission is now required to make findings pursuant to §15091 of the CEQA Guidelines, adopt a Mitigation, Monitoring and Reporting Program, and adopt a Statement of Overriding Considerations in order to proceed in compliance with CEQA and approve the project. These actions are discussed below.

**Statement of Findings:** CEQA Guidelines Section 15091 requires that one or more of a set of three findings be made by a public agency prior to approving a project whenever an EIR identifies a significant effect on the environment; these findings are established in Section 15091 (a) of the CEQA Guidelines:

*15091. (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:*

*(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.*

*(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*

*(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.*

The findings required for the approval of this project have been prepared for your adoption as “Statement of Findings, Tuluwat Restoration Project, SCH No. 2004122022, April 14, 2008”, included herein as Exhibit “C” and incorporated by reference into Resolution 2008-02 approving the project, included herein as Exhibit “F”. The adoption of these findings is required in order to allow the Planning Commission to approve the project in compliance with CEQA. Finding 15091(a)(3) was made for two significant impacts identified in the EIR that may not be reduced to insignificant. Therefore, in addition to the Statement of Findings, a Statement of Overriding Considerations must be adopted prior to approving the project; this requirement is discussed below.

Mitigation, Monitoring and Reporting Program: CEQA Guidelines Section 15091(d) requires that when making the finding that changes have been incorporated into the project to substantially lessen or avoid significant environmental effects, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval. Pursuant to Sections 15091(d) and 15097 of the CEQA Guidelines, a “Statement of Mitigation Monitoring and Reporting Programs, Tuluwat Restoration Project, SCH No. 2004122022, April 14, 2008”, included herein as Exhibit “D” has been prepared for adoption and is also incorporated by reference into Resolution 2008-02. The adoption of these mitigation measures and monitoring programs will allow the Planning Commission to adopt the findings discussed above, and ultimately approve the project.

Overriding Considerations: Section 21081 of CEQA and CEQA Guidelines Section 15093 require that when a public agency has made the findings required under Section 15091(a)(3) of the CEQA Guidelines, the public agency must find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. Section 15093 of the CEQA Guidelines notes that CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project, and requires that when a lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record, and that the statement of overriding considerations shall be supported by substantial evidence in the record.

Almost all the potentially significant effects of the Project have been reduced to insignificance by the inclusion of mitigation measures as conditions of approval of the project. The findings contained in the Statement of Findings together with the Statement of Mitigation Monitoring and Reporting Programs to be adopted support this conclusion. However, there are some impacts that, even after adoption of all feasible mitigation measures, remain potentially significant. A “Statement of Overriding Considerations, Tuluwat Restoration Project, SCH No. 2004122022, April 14, 2008” is included herein as Exhibit “E” and is also incorporated by reference into the attached Resolution 2008-02. Since there are significant impacts that may not be fully mitigated, the Planning Commission must adopt this Statement when approving the project.

The potentially unmitigated impacts include risks associated with inadequate emergency access, and risks associated with a tsunami event as a result of inadequate access, as discussed in greater detail in the Statement of Overriding Considerations. The benefits or “overriding considerations” of the project that make these potential impacts acceptable are also included in the Statement of Overriding Considerations. These benefits are essentially those that would result from meeting the project objectives as stated in the EIR and project information above, and in summary include 1) re-establishment of the Tuluwat Village World Renewal Ceremony; 2) protection of sensitive cultural and archaeological resources; 3) provision of a venue for educational and cultural field trips and increase public access; and 4) environmental enhancement.

**Support Material:**

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Exhibit “C”:	Statement of Findings .....	pages 27-39
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Exhibit “F”:	Resolution 2008-02 .....	pages 81-84
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Kevin Hamblin, AICP  
Director of Community Development

April 14, 2008

## **Exhibit “A”**

### **FINDINGS OF FACT**

#### **Tuluwat Restoration Project SCH No. 2004122022 April 14, 2008**

The decision of the Planning Commission to approve with conditions the subject application was made after careful, reasoned and equitable consideration of the evidence in the record, including, but not be limited to: written and oral testimony submitted at the public hearing; the staff report; site investigation(s); agency comments; project file; and, the evidence submitted with the permit application. The findings of fact listed below “bridge the analytical gap” between the raw evidence in the record and the Planning Commission’s decision.

1. The project site is located in the coastal zone, within State retained jurisdiction. A coastal development permit will be required from the state for the Project, which will insure consistency with the Coastal Act policies.
2. The Project site has a zoning and general plan land use designation of Natural Resources. The Project includes elements of educational and scientific study, restoration and enhancement for fish and wildlife habitat values, and pedestrian access, consistent with conditionally allowed uses in the zoning district.
3. The Project must be located on Indian Island at Tuluwat (i.e. it is site-specific) to meet the project objectives; one of the main objectives is to restore the World Renewal Ceremony which can only be held at its historic location, which is Tuluwat. Cultural and natural resources are inextricable linked in Wiyot culture, providing the basis for finding that the Project, which is primarily cultural in nature, is resource dependent for the purpose of finding it consistent with the purpose of the NR zoning district.
4. The Project construction and operation will not result in unmitigated potentially significant environmental impacts because of the Project elements proposed by the applicant together with mitigation measures included as a condition of approval, with the exception of potentially significant unmitigable impacts relative to inadequate emergency access, including impacts due to a tsunami event because of inadequate emergency access. The unavoidable impacts relative to inadequate emergency access are considered acceptable because of the overriding benefits of the project as set forth in the Statement of Overriding Considerations.
5. The Project meets the purpose and intent of the property conveyance from the City to the Wiyot Tribe, as contained in the Gift Grant Deed 2004-22905-5, Humboldt County Records.



6. The Project will improve the Humboldt Bay environment because it proposes contaminated soil cleanup, removal of debris, rehabilitation or reconstruction of dilapidated structures, removal of non-native vegetation and replanting with natives, and installation of a protective shoreline revetment.
7. The Project will reduce the incidence of trespass on the Project site because it will increase the presence of the Tribe, including a caretaker, in a manner that is consistent with the NR zoning district. This will, in turn, result in increased protection of the environmentally sensitive habitat areas and increased protection against looting of sensitive cultural resources.
8. The Project will provide controlled and supervised public access to the Project site where no public access currently exists.
9. The Project will result in an improved viewshed toward the Project site because it will remove debris and dilapidated structure, and because improvements will be constructed in a manner that emulates traditional construction and that is compatible with the native surroundings.
10. The Project will provide an educational/recreational opportunity for the local and visiting public, schools, and other groups by offering weekly tours of the Project site.
11. The conditional use permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA). On August 13, 2007 the Planning Commission certified the Tuluwat Restoration Project Final Environmental Impact Report, SCH #2004122022, dated August 2007. Further, the Planning Commission adopted a Statement of Findings, Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations on April 14, 2008 in compliance with CEQA.

End Exhibit A

## **Exhibit "B"**

### **Conditions of Approval**

#### **Tuluwat Restoration Project SCH No. 2004122022 April 14, 2008**

**Approval of the Conditional Use Permit is conditioned on the following terms and requirements. The violation of any term or requirement of this conditional approval may result in the revocation of the permit.**

1. The applicant shall comply with all project descriptions, site plans, findings, recommendations, mitigation measures, conditions, restrictions, etc. as detailed herein, in the adopted environmental documents and the submitted documents and correspondence regarding the project. This specifically includes all mitigation measures contained in the "Statement of Mitigation Monitoring and Reporting Program, Tuluwat Restoration Project, SCH No. 2004122022, April 14, 2008".
2. Prior to the start of construction, the applicant shall provide evidence that all required permits or authorizations from local, state and/or federal governmental agencies have been obtained as may be required.
3. The applicant shall receive approval of the project by the City's Design Review Committee.
4. The issuance of this conditional use permit shall constitute a reaffirmation on the part of the applicant of their commitment to honor the terms of terms and restrictions as contain in the Gift Grant Deed, document 2004-22905-5, Humboldt County Official Records.
5. The Wiyot Tribe as applicant shall waive its sovereign right to immunity from suit solely for the purpose of enforcement of this conditional use permit. Initiation of any work covered by this permit shall constitute the applicant's agreement to execute such a waiver. An express written waiver of sovereign immunity as authorized by resolution of the Wiyot Tribal Council shall be submitted to the Community Development Department prior to the City authorizing construction of any Phase 2 tasks and/or prior to the applicant undertaking any such construction.
6. The issuance of this permit and the findings supporting its issuance are specific to the Wiyot Tribe and reestablishment of their World Renewal Ceremony and related activities at the Project site. Any transfer of ownership of the Project site would be considered a change of use that would nullify this permit unless it can be demonstrated by the Tribe to the reasonable satisfaction of the City that such conveyance is fully consistent with the findings that support the permit's issuance.

**End Exhibit "B"**